

FILED
MAR 26 2008
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

UNITED STATES OF AMERICA,	*	
	*	CR 07-10041
	*	
Plaintiff,	*	
	*	JURY INSTRUCTIONS
	*	
-vs-	*	
	*	
KEVIN FARMER,	*	
	*	
Defendant.	*	
	*	

INSTRUCTION NO. 1

Ladies and gentlemen of the jury, it is my duty now to explain the rules of law you must apply to this case.

You as jurors are the sole judges of the facts. But it is your duty to follow the law stated in these instructions, and to apply that law to the facts as you find them from the evidence before you. It would be a violation of your sworn duty to base your verdicts upon any rules of law other than the ones given you in these instructions, regardless of your personal feelings as to what the law ought to be.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

INSTRUCTION NO. 2

You have been chosen and sworn as jurors to try the issues of fact presented by the allegations of the indictment and the denials made by the defendant in his pleas of “not guilty.” You are to perform this duty without bias or prejudice, because the law does not permit jurors to be governed by sympathy or public opinion. The accused and the public expect that you will carefully and impartially consider all of the evidence and will follow the law as stated by the Court, in order to reach just verdicts, regardless of the consequences to any party.

INSTRUCTION NO. 3

The indictment in this case charges that the defendant committed the crimes of bank fraud and uttering or possessing a counterfeit security. The defendant has pleaded not guilty to these charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Therefore, the defendant, even though charged, begins the trial with no evidence against him. This presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crime charged.

There is no burden upon the defendant to prove that he is innocent.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

INSTRUCTION NO. 4

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NO. 5

I have mentioned the word “evidence.” The evidence in this case consists of the testimony of witnesses, and the documents and other things received as exhibits.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions and comments by lawyers representing the parties in the case are not evidence.

2. Objections are not evidence. Lawyers have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony and questions that I struck from the record, or told you to disregard, are not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, you were instructed that some evidence was received for a limited purpose only and you must follow such instruction.

INSTRUCTION NO. 6

There are two types of evidence from which you may find the truth as to the facts of a case--direct evidence and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of the defendant. The law makes no distinction between the weight to be given to either direct evidence or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

INSTRUCTION NO. 7

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

You should judge the testimony of the defendant in the same manner as you judge the testimony of any other witness.

INSTRUCTION NO. 8

The weight of the evidence is not necessarily determined by the number of witnesses testifying. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of a greater credence. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

INSTRUCTION NO. 9

You have heard evidence that the defendant was previously convicted of a crime. You may use that evidence only to help you decide whether the defendant had the necessary intent to commit the crimes for which he is on trial here. The defendant is on trial here only for the crimes charged in the indictment. The fact that he was previously convicted of writing non-sufficient funds checks does not mean he is guilty of the crimes charged in the indictment and you may not convict him on that basis. The evidence as to the previous conviction may be considered by you only in deciding intent, knowledge, or motive.

INSTRUCTION NO. 10

The crime of bank fraud, as charged in Count 1 of the indictment, has three essential elements, which are:

1. From on or about between May 1, 2007, and June 30, 2007, in the District of South Dakota, the defendant knowingly participated in a scheme to defraud a financial institution to obtain money under the custody and control of the Sisseton-Wahpeton Federal Credit Union by means of material false or fraudulent representations, in that he did knowingly deposit a counterfeit Compass Bank check into his account and then spent or withdrew most of the funds deposited.
2. The defendant did so with intent to defraud; and
3. The Sisseton-Wahpeton Federal Credit Union was insured by the National Credit Union Administration.

The phrase "scheme to defraud" includes any plan or course of action intended to deceive or cheat another out of money by employing material falsehoods or concealing material facts. It also means the obtaining of money from a financial institution by means of material false representations or promises.

A representation or pretense is "false" when it is untrue when made or effectively conceals or omits a material fact. A representation or pretense is "material" if it has a natural tendency to influence, or is capable of influencing, the decision of the institution in deciding whether to engage or not to engage in a particular transaction. However, whether a representation or pretense is "material" does not depend on whether the institution was actually deceived.

For you to find Kevin Farmer guilty of this crime, as charged in Count 1 of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find Kevin Farmer not guilty of this crime.

INSTRUCTION NO. 11

The crime of uttering or possessing a counterfeit security, as charged in Count 2 of the indictment, has four elements, which are:

1. On or about between May 1, 2007, and June 30, 2007, in the District of South Dakota, defendant knowingly uttered or possessed a counterfeit Compass Bank check.
2. The defendant knew that the check was counterfeit when he uttered or possessed it.
3. Defendant did so with the intent to defraud, and
4. Compass Bank is an organization which operates in or its activities affect interstate commerce.

For you to find Kevin Farmer guilty of this crime, as charged in Count 2 of the indictment, the government must prove all of these essential elements beyond a reasonable doubt. Otherwise, you must find Kevin Farmer not guilty of this crime.

INSTRUCTION NO. 12

Intent may be proved like anything else. You may consider any statements made and acts done by the defendant, and all the facts and circumstances in evidence which may aid in a determination of the intent of the defendant.

You may, but are not required to, infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

INSTRUCTION NO. 13

One of the issues in this case is whether the defendant acted in good faith. Good faith is a complete defense to the offenses charged if it is inconsistent with the intent to defraud or deceive another, which is an element of the charges pending before you.

Intent to defraud is not presumed or assumed; it is personal and not imputed. One is chargeable with his own personal intent, not the intent of some other person. Bad faith is an essential element of intent to defraud. Good faith constitutes a complete defense to one charged with an offense of which intent to defraud is an essential element. One who acts with honest intentions is not chargeable with intent to defraud. Evidence which establishes only that a person made a mistake in judgment or an error in management, or was careless, does not establish intent to defraud. In order to establish intent to defraud on the part of a person, it must be established that such person knowingly and intentionally attempted to deceive another. One who knowingly and intentionally deceives another is chargeable with intent to defraud notwithstanding the manner and form in which the deception was attempted.

Evidence that the defendant acted in good faith may be considered by you together with all of the other evidence in determining whether or not he acted with the intent to defraud or deceive another.

INSTRUCTION NO. 14

You may find that the defendant acted knowingly if you find beyond a reasonable doubt that the defendant was aware of a high probability that the Compass Bank check was counterfeit and that he deliberately avoided learning the truth. The element of knowledge may be inferred if the defendant deliberately closed his eyes to what would otherwise have been obvious to him. You may not find the defendant acted “knowingly” if you find he was merely negligent, careless or mistaken as to whether the instrument was counterfeit.

You may not find that the defendant acted knowingly if you find that the defendant actually believed that the check was valid and not counterfeit.

INSTRUCTION NO. 15

You will note that the indictment charges that the offenses were committed “from on or about between” certain dates. The proof need not establish with certainty the exact date of the alleged offenses. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offenses were committed on a date or dates reasonably near the dates alleged.

INSTRUCTION NO. 16

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations, and will be your spokesperson here in Court.

A verdict form has been prepared for your convenience.

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdicts, you will have your foreperson fill in, date and sign the form to state the verdicts upon which you unanimously agree, and then return with your verdicts to the courtroom.

INSTRUCTION NO. 17

The verdicts must represent the considered judgment of each juror. In order to return any verdict, it is necessary that each juror agree thereto. Your verdicts must be unanimous.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for himself or herself, but do so only after an impartial consideration of the evidence in the case with the other jurors. In the course of your deliberations, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. 18

If you have questions, you may send a note by a marshal, signed by your foreperson, or by one or more members of the jury.

You will note from the oath about to be taken by the marshal that the marshal and all other persons are forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are never to reveal to any person--not even to the Court--how the jury stands, numerically or otherwise, on the question of the guilt or innocence of the accused, until after you have reached unanimous verdicts.

INSTRUCTION NO. 19

It is proper to add a final caution.

Nothing that I have said in these instructions—and nothing that I have said or done during the trial—has been said or done to suggest to you what I think your verdicts should be.

What the verdicts shall be is your exclusive duty and responsibility.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

UNITED STATES OF AMERICA,	*	CR 07-10041
	*	
Plaintiff,	*	
	*	
-vs-	*	VERDICT
	*	
KEVIN FARMER,	*	
	*	
Defendant.	*	

Please return a verdict by placing an "X" in the space provided.

COUNT 1

We, the jury in the above entitled action, as to the crime of bank fraud, find Kevin Farmer:

_____ NOT GUILTY _____ GUILTY

COUNT 2

We, the jury in the above entitled action, as to the crime of uttering or possessing a counterfeit security, find Kevin Farmer:

_____ NOT GUILTY _____ GUILTY

Dated this _____ day of March, 2008.

Foreperson